

AMENDED IN SENATE MAY 11, 2010
AMENDED IN SENATE APRIL 20, 2010
AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1266

Introduced by Senator Liu

(Principal coauthor: Assembly Member Bonnie Lowenthal)

**(Coauthors: Senators Hancock and Leno, Leno, Negrete McLeod,
and Pavley)**

~~(Coauthor)~~ Coauthors: Assembly Member Saldana Members Evans,
Saldana, Skinner, and Yamada)

February 19, 2010

An act to *amend Section 4532 of, and to add Section 1170.05 to, the Penal Code*, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 1266, as amended, Liu. Inmates: alternative custody.

Existing law provides a system of prisons under the Department of Corrections and Rehabilitation to house inmates committed to state prison for felonies.

This bill would authorize the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates, pregnant ~~individuals~~ *inmates*, or inmates who, immediately prior to incarceration, were primary caregivers of dependent children, as defined, who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison. The bill would define an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility during the hours

designated by the Department of Corrections and Rehabilitation. The bill would authorize the department to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements. The bill would, among other things, provide inmate eligibility criteria, authorize the secretary to prescribe rules and regulations for the program, including imposing certain inmate participation requirements, and authorize certain inmate compliance verification procedures. *The bill would make the escape or attempted escape from this program a misdemeanor, thereby creating a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The incarceration rate for female offenders has doubled over
- 4 the last 20 years. As a result, California now has about 10,000
- 5 incarcerated women, which is more than any other state.
- 6 (b) Nearly 70 percent of female inmates are nonviolent
- 7 offenders. Two-thirds of female inmates were convicted of property
- 8 or drug-related crimes.
- 9 (c) While over half of the men in prison were incarcerated for
- 10 violent crimes, only 30 percent of women were convicted of
- 11 violence.
- 12 (d) Female inmates are more likely to be victims of violent
- 13 crimes than to be the perpetrators. Four in 10 female inmates were
- 14 physically or sexually abused before 18 years of age.
- 15 (e) Over two-thirds of women are classified as low risk by the
- 16 prison classification system. However, women are often held in
- 17 more secure environments than their custody classifications would
- 18 warrant.

1 (f) Approximately 67 percent of incarcerated women are
2 mothers, and many of them are single parents. Most of California's
3 incarcerated mothers are the primary care givers of dependent
4 children and hope to return home to their children. While the vast
5 majority of children of incarcerated men continue to live with their
6 mothers, children of incarcerated women are more likely to end
7 up living with other relatives or in foster care.

8 (g) Separating parents from children has a substantial impact
9 on their futures. Children of inmates are much more likely than
10 their peers to become incarcerated. Research suggests that mothers
11 who are able to maintain a relationship with their children are less
12 likely to return to prison. Research also demonstrates that a father's
13 involvement in his child's life greatly improves the child's chances
14 for success. Helping incarcerated fathers foster stronger
15 connections with their children, where appropriate, can have
16 positive effects for children. Strong family connections help to
17 ensure that fathers stay out of prison once they are released.

18 (h) To break the cycle of incarceration, California must adopt
19 policies that facilitate parenting and family reunification.

20 SEC. 2. Section 1170.05 is added to the Penal Code, to read:

21 1170.05. (a) Notwithstanding any other law, the Secretary of
22 the Department of Corrections and Rehabilitation is authorized to
23 offer a program under which female inmates and inmates who
24 were primary caregivers of dependent children immediately prior
25 to incarceration, as specified in subdivision (c), who are not
26 precluded by subdivision (d), and who have been committed to
27 state prison may be allowed to participate in a voluntary alternative
28 custody program as defined in subdivision (b) in lieu of their
29 confinement in state prison. In order to qualify for the program an
30 offender need not be confined in an institution under the
31 jurisdiction of the Department of Corrections and Rehabilitation.
32 Under this program, one day of participation in an alternative
33 custody program shall be in lieu of one day of incarceration in a
34 state prison. Participants in the program shall receive any sentence
35 reduction credits that they would have received had they served
36 their sentence in a state prison, and shall be subject to denial and
37 loss of credit pursuant to subdivision (a) of Section 2932. The
38 department may enter into contracts with county agencies,
39 not-for-profit organizations, for-profit organizations, and others
40 in order to promote alternative custody placements.

(b) As used in this section, an alternative custody program shall include, but not be limited to, the following:

(1) Confinement to a residential home during the hours designated by the department.

(2) Confinement to a residential drug or treatment program during the hours designated by the department.

(3) Confinement to a transitional care facility during the hours designated by the department.

(c) Except as provided by subdivision (d), female inmates, pregnant ~~individuals~~ inmates, or inmates who were primary caregivers of dependent children immediately prior to incarceration sentenced to state prison for a determinate term of imprisonment pursuant to Section 1170, and only those persons, shall be eligible to participate in the alternative custody program authorized by this section.

(d) An inmate committed to the state prison who meets any of the following criteria shall not be eligible to participate in the alternative custody program:

(1) The person has a current or prior conviction for a violent offense *felony* as defined in Section 667.5.

(2) *The person has a current or prior conviction for a serious felony as defined in Sections 1192.7 and 1192.8.*

~~(2)~~

(3) The person has a current or prior conviction for an offense that requires the person to register as a sex offender as provided in Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

~~(3)~~

(4) The person was screened by the department using a validated risk assessment tool and determined to pose a high risk to commit a violent offense.

~~(4)~~

(5) The person has a history, within the last 10 years, of escape from a facility while under juvenile or adult custody, including, but not limited to, any detention facility, camp, jail, or state prison facility.

(e) An alternative custody program shall include the use of electronic monitoring, global positioning system devices, or other supervising devices for the purpose of helping to verify a participant's compliance with the rules and regulations of the

1 program. The devices shall not be used to eavesdrop or record any
2 conversation, except a conversation between the participant and
3 the person supervising the participant, in which case the recording
4 of such a conversation is to be used solely for the purposes of voice
5 identification.

6 (f) (1) It is the intent of the Legislature that the department shall
7 be allocated in its budget 50 percent of the savings created by the
8 enactment of this section, once savings are achieved, to administer
9 evidence-based practices to participants placed in alternative
10 custody. In order to implement alternative custody for the
11 population specified in subdivision (c), the department shall create,
12 and the participant shall agree to and fully participate in, *a an*
13 *individualized treatment and rehabilitation* plan of evidence-based
14 programs and services that will aid in the successful reentry into
15 society while participating in alternative custody.

16 (2) The department shall collaborate with local law enforcement
17 and community-based programs that administer evidence-based
18 practices in order to prevent recidivism among individuals placed
19 in alternative custody and assist in reentry into society. *Mandatory*
20 *case management services shall be provided to support*
21 *rehabilitation, and to track the progress and individualized*
22 *treatment plan compliance of the inmate.*

23 (3) For purposes of this section, “evidence-based practices”
24 means supervision policies, procedures, programs, and practices
25 demonstrated by scientific research to reduce recidivism among
26 individuals under probation, parole, or postrelease supervision.

27 (g) The secretary shall prescribe reasonable rules and regulations
28 under which the alternative custody program shall operate. The
29 department shall adopt regulations necessary to effectuate this
30 section, including emergency regulations as provided under Section
31 5058.3 and adopted pursuant to the Administrative Procedure Act
32 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
33 Division 3 of Title 2 of the Government Code). The participant
34 shall be informed in writing that he or she shall comply with the
35 rules and regulations of the program, including, but not limited to,
36 the following rules:

37 (1) The participant shall remain within the interior premises of
38 his or her residence during the hours designated by the secretary
39 or his or her designee.

(2) The participant shall be subject to search and seizure by a parole officer or other peace officer at any time of the day or night, with or without cause. In addition, the participant shall admit any peace officer designated by the secretary or his or her designee into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention. Prior to participation in the alternative custody program, all participants shall agree in writing to these terms and conditions.

(3) The secretary or his or her designee may immediately retake the participant into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of detention, if the participant fails to remain within the place of detention as stipulated in the agreement, or if the participant for any other reason no longer meets the established criteria under this section.

(h) Whenever a peace officer supervising a participant has reasonable suspicion to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the secretary or his or her designee, and without a warrant of arrest, retake the participant into custody to complete the remainder of the original sentence.

(i) Nothing in this section shall be construed to require the secretary or his or her designee to allow an inmate to participate in this program if it appears from the record that the inmate has not satisfactorily complied with reasonable rules and regulations while in custody. An inmate shall be eligible for participation in an alternative custody program only if the secretary or his or her designee concludes that the inmate meets the criteria for program participation established under this section and that the inmate's participation is consistent with any reasonable rules and regulations prescribed by the secretary.

(1) The rules and regulations and administrative policies of the program shall be written and shall be given or made available to ~~any participant upon request.~~ *the participant upon assignment to the alternative custody program.*

1 (2) The secretary or his or her designee shall have the sole
2 discretion concerning whether to permit program participation as
3 an alternative to custody in state prison.

4 (j) The secretary or his or her designee shall permit program
5 participants to seek and retain employment in the community,
6 attend psychological counseling sessions or educational or
7 vocational training classes, *participate in life skills or parenting*
8 *training, utilize substance abuse treatment services*, or seek medical
9 and dental assistance. *Participation in other rehabilitative services*
10 *and programs may be approved by the case manager if it is*
11 *specified as a requirement of the inmate's individualized treatment*
12 *and rehabilitative case plan.* Willful failure of the program
13 participant to return to the place of detention not later than the
14 expiration of any period of time during which he or she is
15 authorized to be away from the place of detention pursuant to this
16 section, unauthorized departures from the place of detention, or
17 tampering with or disabling, or attempting to tamper with or
18 disable, an electronic monitoring device shall subject the participant
19 to a return to custody pursuant to subdivisions (g) and (h). In
20 addition, participants may be subject to forfeiture of credits
21 pursuant to the provisions of Section 2932, or to discipline for
22 violation of rules established by the secretary.

23 (k) (1) Notwithstanding any other law, the secretary or his or
24 her designee shall provide the information specified in paragraph
25 (2) regarding participants in an alternative custody program to the
26 law enforcement agencies of the jurisdiction in which persons
27 participating in an alternative custody program reside.

28 (2) The information required by paragraph (1) shall consist of
29 the following:

30 (A) The participant's name, address, and date of birth.

31 (B) The offense committed by the participant.

32 (C) The period of time the participant will be subject to an
33 alternative custody program.

34 (3) Any information received by a law enforcement agency
35 pursuant to this subdivision shall be used only for the purpose of
36 monitoring the impact of an alternative custody program on the
37 community.

38 (l) It is the intent of the Legislature that the alternative custody
39 program established under this section maintain the highest public
40 confidence, credibility, and public safety. In the furtherance of

1 these standards, the secretary may administer an alternative custody
2 program pursuant to written contracts with appropriate public
3 agencies or entities to provide specified program services. No
4 public agency or entity entering into a contract may itself employ
5 any person who is in an alternative custody program.

6 (m) An inmate participating in this program must voluntarily
7 agree to all of the provisions of the program in writing, including
8 that he or she may be returned to confinement at any time with or
9 without cause, and shall not be charged fees or costs for the
10 program.

11 (n) *The Department of Corrections and Rehabilitation shall*
12 *retain responsibility for the medical and mental health needs of*
13 *individuals participating in the alternative custody program.*

14 ~~(n)~~

15 (o) The secretary shall adopt emergency regulations specifically
16 governing participants in this program.

17 ~~(o) For purposes of this section, “primary caregivers of~~
18 ~~dependent children” means persons who are those primarily~~
19 ~~responsible for the care and upbringing of one or more children.~~

20 (p) *A person is a primary caregiver of a dependent child for*
21 *purposes of this section if all of the following criteria are met:*

22 (1) *The child is the inmate’s son, daughter, step child, adopted*
23 *child, or foster child.*

24 (2) *The child is 17 years of age or less at the time of the inmate’s*
25 *placement into the alternative custody program.*

26 (3) *The child resided with the inmate for the majority of the*
27 *year preceding the inmate’s arrest.*

28 (4) *At the time the inmate was arrested, the inmate had physical*
29 *custody of the child and was primarily responsible for the care*
30 *and upbringing of the child. Factors that may be considered when*
31 *determining whether the inmate was primarily responsible for the*
32 *care and upbringing of the child include, but are not limited to,*
33 *the following, provided that an inmate may be determined to be*
34 *primarily responsible for the care and upbringing of a child without*
35 *satisfying all of these factors:*

36 (A) *The inmate supervised the child’s daily activities.*

37 (B) *The inmate provided the necessities of life for the child.*

38 (C) *The inmate was the person responsible for arranging day*
39 *care for the child, if and when necessary.*

1 (D) *The inmate was responsible for the child's medical needs*
2 *and arranging doctor appointments or hospital visits, if and when*
3 *necessary.*

4 (E) *The inmate was responsible for arranging for the child's*
5 *attendance at school.*

6 ~~(P)~~

7 (q) If any phrase, clause, sentence, or provision of this section
8 or application thereof to any person or circumstance is held invalid,
9 such invalidity shall not affect any other phrase, clause, sentence,
10 or provision or application of this section, which can be given
11 effect without the invalid phrase, clause, sentence, or provision or
12 application and to this end the provisions of this section are
13 declared to be severable.

14 SEC. 3. *Section 4532 of the Penal Code is amended to read:*

15 4532. (a) (1) Every prisoner arrested and booked for, charged
16 with, or convicted of a misdemeanor, and every person committed
17 under the terms of Section 5654, 5656, or 5677 of the Welfare and
18 Institutions Code as an inebriate, who is confined in any county
19 or city jail, prison, industrial farm, or industrial road camp, is
20 engaged on any county road or other county work, is in the lawful
21 custody of any officer or person, is employed or continuing in his
22 or her regular educational program or authorized to secure
23 employment or education away from the place of confinement,
24 pursuant to the Cobey Work Furlough Law (Section 1208), is
25 authorized for temporary release for family emergencies or for
26 purposes preparatory to his or her return to the community pursuant
27 to Section 4018.6, or is a participant in a home detention program
28 pursuant to Section 1203.016, and who thereafter escapes or
29 attempts to escape from the county or city jail, prison, industrial
30 farm, or industrial road camp or from the custody of the officer or
31 person in charge of him or her while engaged in or going to or
32 returning from the county work or from the custody of any officer
33 or person in whose lawful custody he or she is, or from the place
34 of confinement in a home detention program pursuant to Section
35 1203.016, is guilty of a felony and, if the escape or attempt to
36 escape was not by force or violence, is punishable by imprisonment
37 in the state prison for a determinate term of one year and one day,
38 or in a county jail not exceeding one year.

39 (2) If the escape or attempt to escape described in paragraph
40 (1) is committed by force or violence, the person is guilty of a

1 felony, punishable by imprisonment in the state prison for two,
2 four, or six years to be served consecutively, or in a county jail
3 not exceeding one year. When the second term of imprisonment
4 is to be served in a county jail, it shall commence from the time
5 the prisoner otherwise would have been discharged from jail.

6 (3) A conviction of a violation of this subdivision, or a violation
7 of subdivision (b) involving a participant of a home detention
8 program pursuant to Section 1203.016, that is not committed by
9 force or violence, shall not be charged as a prior felony conviction
10 in any subsequent prosecution for a public offense.

11 (b) (1) Every prisoner arrested and booked for, charged with,
12 or convicted of a felony, and every person committed by order of
13 the juvenile court, who is confined in any county or city jail, prison,
14 industrial farm, or industrial road camp, is engaged on any county
15 road or other county work, is in the lawful custody of any officer
16 or person, or is confined pursuant to Section 4011.9, is a participant
17 in a home detention program pursuant to Section 1203.016, who
18 escapes or attempts to escape from a county or city jail, prison,
19 industrial farm, or industrial road camp or from the custody of the
20 officer or person in charge of him or her while engaged in or going
21 to or returning from the county work or from the custody of any
22 officer or person in whose lawful custody he or she is, or from
23 confinement pursuant to Section 4011.9, or from the place of
24 confinement in a home detention program pursuant to Section
25 1203.016, is guilty of a felony and, if the escape or attempt to
26 escape was not by force or violence, is punishable by imprisonment
27 in the state prison for 16 months, two years, or three years, to be
28 served consecutively, or in a county jail not exceeding one year.

29 (2) If the escape or attempt to escape described in paragraph
30 (1) is committed by force or violence, the person is guilty of a
31 felony, punishable by imprisonment in the state prison for a full
32 term of two, four, or six years to be served consecutively to any
33 other term of imprisonment, commencing from the time the person
34 otherwise would have been released from imprisonment and the
35 term shall not be subject to reduction pursuant to subdivision (a)
36 of Section 1170.1, or in a county jail for a consecutive term not to
37 exceed one year, that term to commence from the time the prisoner
38 otherwise would have been discharged from jail.

39 (c) *Notwithstanding any other law, every inmate who is a*
40 *participant in an alternative custody program pursuant to Section*

1 *1170.05 who escapes or attempts to escape from the program is*
2 *guilty of a misdemeanor.*

3 ~~(e)~~

4 (d) (1) Except in unusual cases where the interests of justice
5 would best be served if the person is granted probation, probation
6 shall not be granted to any person who is convicted of a felony
7 offense under this section in that he or she escaped or attempted
8 to escape from a secure main jail facility, from a court building,
9 or while being transported between the court building and the jail
10 facility.

11 (2) In any case in which a person is convicted of a violation of
12 this section designated as a misdemeanor, he or she shall be
13 confined in a county jail for not less than 90 days nor more than
14 one year except in unusual cases where the interests of justice
15 would best be served by the granting of probation.

16 (3) For the purposes of this subdivision, “main jail facility”
17 means the facility used for the detention of persons pending
18 arraignment, after arraignment, during trial, and upon sentence or
19 commitment. The facility shall not include an industrial farm,
20 industrial road camp, work furlough facility, or any other nonsecure
21 facility used primarily for sentenced prisoners. As used in this
22 subdivision, “secure” means that the facility contains an outer
23 perimeter characterized by the use of physically restricting
24 construction, hardware, and procedures designed to eliminate
25 ingress and egress from the facility except through a closely
26 supervised gate or doorway.

27 (4) If the court grants probation under this subdivision, it shall
28 specify the reason or reasons for that order on the court record.

29 (5) Any sentence imposed under this subdivision shall be served
30 consecutive to any other sentence in effect or pending.

31 ~~(d)~~

32 (e) The willful failure of a prisoner, whether convicted of a
33 felony or a misdemeanor, to return to his or her place of
34 confinement no later than the expiration of the period that he or
35 she was authorized to be away from that place of confinement, is
36 an escape from that place of confinement. This subdivision applies
37 to a prisoner who is employed or continuing in his or her regular
38 educational program, authorized to secure employment or education
39 pursuant to the Cobey Work Furlough Law (Section 1208),
40 authorized for temporary release for family emergencies or for

1 purposes preparatory to his or her return to the community pursuant
2 to Section 4018.6, or permitted to participate in a home detention
3 program pursuant to Section 1203.016. A prisoner convicted of a
4 misdemeanor who willfully fails to return to his or her place of
5 confinement under this subdivision shall be punished as provided
6 in paragraph (1) of subdivision (a). A prisoner convicted of a felony
7 who willfully fails to return to his or her place of confinement shall
8 be punished as provided in paragraph (1) of subdivision (b).

9 *SEC. 4. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section 17556 of*
15 *the Government Code, or changes the definition of a crime within*
16 *the meaning of Section 6 of Article XIII B of the California*
17 *Constitution.*